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No. 693

In the Supreme Court of the United States

OCTOBER TERM, 1959

CHARLES OLIVER WILLIAMSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. 8–13) is reported at 272 F. 2d 495.

JURISDICTION

The judgment of the court of appeals was entered on December 4, 1959, and a petition for rehearing was denied on January 12, 1960 (Pet. 7). The petition for a writ of certiorari was filed on February 10, 1960. The jurisdiction of this Court is presumably rested on 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether certain official motor vehicle registration records were properly received in evidence not-

withstanding their form and the custodian's lack of personal knowledge of the facts recorded therein.

2. Whether the trial court properly declined to require a government witness to state on cross-examination the exact location on a stolen automobile where he had found its "confidential serial number," where the court, in a ruling which was not objected to, did require the witness to state the general location of the number and where the exact location was immaterial.

3. Whether the court properly denied a motion for acquittal based upon an alleged failure by the government during the trial to make available to the defense for use in cross-examination a certain F.B.I. report, where the report was present in the courtroom at the time of the motion and the court offered to recall the witnesses to whom the report pertained and permit defense counsel to cross-examine them concerning it, which offer was declined.

4. Whether the evidence is sufficient to support the conviction.

STATEMENT

Count 1 of a 22-count indictment (R. 2-23), filed December 2, 1958, in the United States District Court for the Northern District of Georgia, charged the petitioner with having conspired with three named confederates, and with others to the grand jury unknown, to transport stolen motor vehicles in interstate commerce, knowing them to have been stolen, and to receive, conceal and dispose of such vehicles, with knowledge of their stolen character, in violation of

18 U.S.C. 371, 2312 and 2313. Forty-seven overt acts were alleged (R. 3–14). Each of the remaining counts (R. 14–23) charged a substantive violation either of 18 U.S.C. 2312 (transporting) or of 18 U.S.C. 2313 (receiving and concealing), involving a total of nine vehicles. Following a trial by jury, the petitioner was found guilty on the conspiracy count and on all but three of the substantive counts (R. 33).[1] He was sentenced to four years' imprisonment on the conspiracy count and to four years on each substantive count, the sentences on the substantive counts to run concurrently with one another but consecutively to that on the conspiracy count, making a total of eight years (R. 506–507). On appeal to the Court of Appeals for the Fifth Circuit, the judgment of conviction was affirmed (Pet. 7, 8–13).

There is no occasion to summarize in detail the evidence presented by the government. Except as to count 15 (which is no longer involved, since a judgment of acquittal was granted as to that count, see R. 486–489) and counts 4, 5 and 6 (as to which the motion for acquittal was based solely on an immaterial misspelling of a name[2]), the petitioner did not (as he impliedly concedes, see Pet. 16) move for a judgment of acquittal at the trial or otherwise question the sufficiency of the proof to submit the case to

[1] A judgment of acquittal was granted as to one substantive count (No. 15) (R. 489) and the jury returned verdicts of not guilty as to two others (2 and 21) (R. 33).

[2] The name of the owner of the automobile involved in these three counts was given in the indictment as "Winkle", whereas the proof showed the correct name to be "Wrinkle" (R. 486).

the jury.[1] In this posture it is enough to say that the government proved the theft and subsequent interstate transportation of each of the vehicles described in the indictment (*e.g.*, R. 63, 253–255, 256–259, 269–270) and, through the testimony of all three of the petitioner's named confederates (R. 79–101, 102–142, 182–196), the petitioner's role as ringleader in what the court of appeals aptly described as "an active interstate ring of car thieves" (Pet. 13). The evidence amply warranted the jury in finding that the petitioner procured the stolen cars, concealed them in Atlanta, and subsequently summoned his underlings to come to Atlanta to pick them up, register them fictitiously, and sell them. The petitioner received a share of the proceeds from each such sale (*e.g.*, R. 109–110, 113–114, 116–117, 119–120, 185).

ARGUMENT

1. The petitioner's contention that certain government exhibits were erroneously received in evidence (Pet. 2–4, 14–15) is without substance. Most of the challenged exhibits (4, 5, 8, 10, 11, 12, 13, 14 and 17) were photostatic copies (substituted for the originals with the consent of defense counsel, see R. 55) of official automobile registration records of the State of

[1] The sufficiency of the evidence to support a conviction will not ordinarily be considered on appeal where the question was not raised in the trial court "unless it is plain that the record is wholly devoid of evidence pointing to guilt". *Molina* v. *United States*, 162 F. 2d 198 (C.A. 5). That this is not a case of the latter sort is clear from the fact that the court of appeals, on the basis of "[a] careful study of the record" (which it made despite the foregoing rule), found the evidence of guilt "overwhelming" (Pet. 12–13).

Georgia (R. 50–55). They were produced and identified by their official custodian, an employee of the Motor Vehicle License Unit of the State Revenue Department (R. 49–50, 55). As official records kept in the regular course of business, they were admissible under the Business Records Act, 28 U.S.C. 1732. The fact that the witness had no personal knowledge of the facts recorded (*i.e.*, the actual issuance of the registration tags to the applicants, which was done at the county level, see R. 56–58) did not affect their admissibility. See 28 U.S.C. 1732(a).

The remainder of the contested exhibits (3, 29, 32 and 33) are objected to because they were photostatic copies or microfilm enlargements of original documents, and were admitted, according to petitioner, without proof that the photostats or microfilms were "exact reproduction[s]" of the originals[*] (Pet. 14–15). This contention is equally insubstantial. Exhibit 3, though a photostat, was identified by its custodian, through whom it was introduced, as an official motor vehicle registration record of the State of Tennessee, "made and kept in the regular and usual and ordinary course of business" (R. 47, 48). Exhibits 29, 32 and 33 were photostatic enlargements of other automobile registration records, which were kept on microfilm in the regular course of business (R. 63–66, 76–78).

[*] The petitioner also challenges Government Exhibit 44 on this basis (Pet. 14–15). That exhibit, however, was not a photostatic or microfilm copy of any document. When first identified in the record, it consisted in part of two photostatic copies of certain original documents (R. 217), but the photostats were removed from the exhibit as non-germane before it was received in evidence (R. 218–219, 228).

As such, they were admissible under the specific terms of 28 U.S.C. 1732(b). See also opinion below at Pet. 10.

2. An F.B.I. agent testified that he checked the "confidential serial number"[5] on a certain automobile and found that it corresponded with the serial number of one of the stolen vehicles (R. 330–331). On cross-examination, counsel for the petitioner asked the witness where on the car he had found the confidential number (R. 331). Government counsel objected on the ground that it would be against public policy to require the public disclosure of the location of an automobile's confidential serial number, since the purpose of a confidential number is to make it difficult for car thieves to conceal thefts by altering these numbers (R. 332). The court ruled that the witness should "give in general terms where he found the confidential number", but that he would not be required to reveal "the exact location" (*ibid.*). Counsel for petitioner made no objection to this ruling. The witness then replied that the number was "on the frame of the automobile" (*ibid.*). Counsel did not press the point further.

The petitioner now contends (Pet. 4, 15) that he was "deprived of his right of cross-examination" (Pet. 15) by the court's ruling. In view of counsel's failure to object to the ruling, however, the contention is clearly

[5] A "confidential serial number", according to the witness, is "a number appearing in various places on an automobile" (depending on the make and model), the locations of which are "known only to the automobile manufacturer and law enforcement agencies" (R. 331, 333).

unsound. In any event, as observed by the court of appeals, "there is nothing to indicate that the location of the serial number [was] material" (Pet. 11).

3. The petitioner's contention that the trial court erred in failing to grant a motion for judgment of acquittal on the ground that a certain F.B.I. report was not furnished to him at the trial (Pet. 4, 17–18) is likewise wholly lacking in merit. The opinion below fully answers this contention (Pet. 11–12) and there is no occasion to repeat here what is there said. It is sufficient to emphasize that when the motion was made the report in question was in the courtroom; that the court offered to recall to the stand both agent Cook, who prepared the report, and Mr. McGiboney, the witness whose interview was the subject of the report, and to permit defense counsel to examine them concerning the contents of the report;[6] and that counsel rejected the offer (R. 483–485). In these circumstances it is evident that the petitioner was deprived of no right and has nothing about which he can complain.

4. Notwithstanding his failure to preserve the point at the trial (see *supra*, pp. 3–4), the petitioner renews in

[6] Since agent Cook did not testify on direct examination concerning the subject matter of the report (R. 268–271; see R. 277–278; and opinion below at Pet. 12), it is clear, in our view, that the defense had no right to cross-examine him with respect to the contents of this report. 18 U.S.C. 3500(b); *Jencks* v. *United States*, 353 U.S. 657, 666, 668. However, since the trial court offered to permit defense counsel to cross-examine this witness as well as Mr. McGiboney with respect to the report, and since the defense declined to take advantage of the offer, it is unnecessary for present purposes to consider whether the defense had a right to interrogate Mr. Cook on the subject.

this Court his challenge of the sufficiency of the evidence (Pet. 4, 15–17), which, as we have seen, was rejected by the court of appeals, following a "careful study of the record", with the observation that the proof of guilt was "overwhelming" (Pet. 12–13). From our brief summary of the evidence, *supra*, p. 4, it is clear, we submit, that the verdict was amply justified.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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